

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 995 OF 2007
WITH
CIVIL APPLICATION NO. 1818 OF 2007

Neelam Basant Bhatt ..Appellant

Vs.

Basant Narayan Bhatt ..Respondent

Ms. Gauri Godse for appellant.
Mr. V.P. Sawant for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : December 20, 2007.

P.C.:

1. Heard Ms. Godse the learned counsel for the appellant. This second appeal arises from the decree of divorce granted by the learned 3rd Joint Civil Judge, S.D., Thane as per his Judgment and Order dated 29/8/2006 by allowing Marriage Petition No. 248 of 2004 and on the ground of desertion within the meaning of Section 13(1)(i-b) of the Hindu Marriage Act, 1955 and duly confirmed by the Lower Appellate Court in Civil Appeal No. 156 of 2006 vide its Judgment and Order dated 4/10/2007.

2. At the threshold, it must be noted that no specific substantial question of law has been framed in this second appeal and after the appeal memo, in note no.4 it has been stated that substantial questions of law are framed in grounds nos.1 to 18 in the appeal memo.

3. The question that was before the Lower Appellate Court was whether the decree granted on the ground of desertion by the wife was supported by the evidence adduced by the parties before the trial court and the Lower Appellate Court, after reappreciating the evidence of both the parties, held that the trial court's reasoning was supported by the evidence on record and the wife had deserted the husband for more than two years.

4. The appellant and the respondent were married on 16/4/2000 at Thane as per the Hindu customs and it was an arrange marriage. There is no issue from the wedlock. The husband approached the court of Civil Judge, S.D. by filing a divorce petition under

Section 13(1)(i-b) of the Hindu Marriage Act, 1955 (the Act for short) and stated that the wife had deserted him from 23/10/2001 onwards on which date she left the matrimonial home to go to her parent's house under the pretext of attending the Navratri Pooja and in spite of his several efforts by writing letters, mediations and personally contacting her on phone, she did not turn up and for more than two years and finally he had no alternative but to seek divorce. It was further contended that initially she was very keen to pursue her education and the family had encouraged her. She could have pursued her education even while staying in the matrimonial home.

. The wife on notice appeared before the trial court and filed her Written Statement opposing the petition. She contended that she had never left the matrimonial home and on the other hand she was sent to attend the Navratri Pooja at her parent's house on 23/10/2001. When she went back to her matrimonial home on 25/10/2001 her father-in-law was under influence of liquor and created a scene in connection with the silver pearl ring gifted to her by her

parents and in the said incident, the father-in-law tried to assault her by means of tea table and asked her to return the ring to her parents at about 2.30 a.m. She also stated that subsequently on 16/11/2001 under the guise of the illness of her in-laws, her parents were called upon to visit her matrimonial home and during that incident the father-in-law abused her parents and he went to the extent of assaulting her mother. She alleged that the father-in-law slapped her mother and torn all her clothes and ornaments. She also alleged that her husband slapped her father and kicked him too. In short, she contended that she had not deserted the matrimonial home and on the other hand she was thrown out of the house and was not allowed to re-enter the same.

5. In support of the divorce petition, the petitioner husband stepped in the witness box and also brought on record the letters he had written to the wife at Exhs.45, 48, 51 and 54 and also the receipts at Exh.41 to 44. The husband stated while in the witness box that his wife left the matrimonial home on 23/10/2001 informing that she was to attend the

Navratri Pooja at her parental home and on 25/10/2001 she came back only to collect her baggage that too in his absence. She did not return despite of his calls and finally when he insisted to give the receipt of the articles she had collected from the matrimonial home, the receipts were given at Exh.41 to 44. He denied the incidents of assault alleged to have taken place on 25/10/2001 and 16/11/2001. He also proved the efforts made by him by writing letters to the wife, contacting her on phone and also through the mediators known to both the families like Dr. Bhojane.

. The wife stepped in the witness box and repeated her allegations in the Written Statement. In support of her testimony, she examined her father D.W.2 Nandballabh Purohit and his cross-examination totally demolished the allegations made by her in her Written Statement as well as in her depositions while in the witness box. The father clearly admitted that till 23/10/2001 the spouses were living together happily, there was no incident of any complaint. He also admitted to have given the receipts at Exhs.41 to

44. He also admitted that the postal acknowledgments on the letters at Exhs.46, 47, 49, 50, 52, 54, 55, 56 and 57 were given on account of receipt of these letters from the husband. He further stated that about the incident alleged to have taken place on 25/10/2001, no complaint was made till 6/11/2001. He did not want to examine the doctor to whom his wife had gone after she had sustained injury allegedly at the hands of the petitioner-husband's father. He was specifically asked whether he wanted to examine Dr.Bhojane and he replied in the negative. The trial court, therefore, recorded a finding that the allegations made by the wife against her husband and her in-laws were not supported by any other evidence and beyond her oral testimony there was nothing to support her case that she had not deserted the matrimonial home. On the other hand, there were two documents which were relied upon by the wife and they were at Exh.69 and 70. Exh.69 is the Admit Card AFMC and Exh.70 is a Receipt cum Identity Card of Maharashtra University of Health Sciences issued in the name of Neelam Bhatt alongwith her photographs. These documents could not substantiate any allegation

made by her. The trial court, therefore, came to the irresistible conclusion that the wife had deserted the husband and he was justified in seeking divorce on the ground of desertion.

6. As noted earlier, the Lower Appellate Court, has reappreciated the entire evidence and concurred with the finding recorded by the trial court and confirmed the decree of divorce on the ground of desertion. This second appeal, therefore, does not involve any substantial question of law for the consideration of this court and hence it must fail at the threshold.

7. Hence, the second appeal is hereby dismissed.

8. Civil Application No. 1818 of 2007 does not survive and the same shall stand disposed as such.

9. Ms. Godse the learned counsel at this stage submitted an oral application to continue the stay granted by the Lower Appellate Court. The oral application has been opposed by Mr. Sawant. However,

it would be just and proper to continue the stay for a period of four weeks more and hence ordered accordingly.

(B.H. Marlapalle, J.)